

SERVED : May 29, 1997

NTSB Order No. EA-4550

UNITED STATES OF AMERICA
NATIONAL TRANSPORTATION SAFETY BOARD
WASHINGTON, D.C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 21st day of May, 1997

BARRY L. VALENTINE,)	
Acting Administrator,)	
Federal Aviation Administration,)	
)	
Complainant,)	
)	Docket SE-14391
v.)	
)	
DAVID KELSEY,)	
)	
Respondent.)	
)	

ORDER DENYING RECONSIDERATION

Respondent has filed a petition for reconsideration of our opinion and order, EA-4514, served January 8, 1997. In our opinion, we affirmed the law judge's initial decision suspending respondent's pilot certificate for 30 days for low flight in the area of Arches National Park. The Administrator opposes the petition and has also filed a motion to dismiss the petition as untimely. We grant the latter motion, to which respondent did not reply.

Respondent's petition was due on February 7, 1997.¹ The Certificate of Service is so dated. However, as the Administrator notes, the presumption that the petition actually was served that day can be overcome. Administrator v. Prero, 7 NTSB 913 (1991) (pleading dated and ostensibly served December 7 but not received by Board until January 4 warrants conclusion

¹ No extension was sought or granted.

that it was not timely). Here, we did not receive the mailed petition until February 21 (having received a faxed copy on February 13) . Although respondent had postmarked the envelope February 7, the Administrator has introduced evidence to show that the Postal Service changed that postmark to February 15. In the absence of any reply by respondent to the Administrator's allegations, we are compelled to agree with the Administrator that the petition was not timely filed. As such, we must dismiss it.²

ACCORDINGLY, IT IS ORDERED THAT:

1. The Administrator's motion is granted; and
2. Respondent's petition for reconsideration is dismissed as untimely.

HALL, Chairman, FRANCIS, Vice Chairman, HAMMERSCHMIDT, GOGLIA, and BLACK, Members of the Board, concurred in the above order.

² Even were we to consider it on the merits, it raises no issues that were not thoroughly considered in our prior decision.